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10/810,365	03/26/2004	Jameson P. Stull	43555-193696	1245

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EXAMINER

SMALLEY, JAMES N

ART UNIT PAPER NUMBER

3727

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

<b>Office Action Summary</b>	<b>Application No.</b> 10/810,365	<b>Applicant(s)</b> STULL ET AL.	
	<b>Examiner</b> James N Smalley	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Response to Amendment*

1. The amendment to claim 1, limiting the locking wedge as, "having an inclined retention surface defining a locking angle," comprises a new issue, for two reasons. The first is that the canceled subject matter of claim 8, from which this limitation originally depended, did not claim an inclined surface. The second reason is that the subject matter previously depended from claim 2. In bypassing the dependency of claim 2, the limitation comprises a new issue not previously considered. Regarding claim 28, the limitation to define the inclined retention surface did not previously depend from claim 28 in any form and comprises a new issue. Finally, claim 41 is new.

In view of these facts, this action is properly made **Final**.

### *Claim Objections*

2. Claim 42 is objected to because of the following informalities: The claim contains the phrase, "The closure/container combination according to claim 28," in the third-to-last line. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 9-10, 12, 14, 16-17, 26, 28, 35-36, 37-38 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Opresco US 5,908,125.

Opresco '125 teaches a screw-on cap, comprising a container with a lip (39) proximate to the open end, a cap including a cover (12), locking levers (21) including upper and lower locking arms with an inwardly projecting locking wedge (28) having an inclined retention surface (29), an elastically deformable

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hinge, whereby the lever is adapted to releasably engage the container lip by radial displacement of the actuation arms.

Regarding claim 41, Examiner notes the Applicant is claiming the cap, and not the combination of the cap and container. Furthermore, Examiner reads the slots on either side of the locking tabs as the holes. In a partially-applied state, these holes are capable of communicating with the container interior to vent.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-12, 16-18, 28-34, 36-37 and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dressel et al. US 6,439,409 in view of Brandlein US 4,579,257.

Dressel '409 teaches a closure comprising a cap (10) including a cover, integrally formed sealing ring/plug (28), two locking arms (18), each with an inwardly projecting ridge, and whereby the upper arm length is longer than the lower arm length, an elastically deformable hinge (20) connecting the locking tab to the cover, and the lever adapted to be releasably engaged and disengaged to the container by radial displacement of the actuation arms. The device is "easily installable and removable" because it only involves simple operations i.e. placing it on the container in order to snap the locking levers over the container retaining flange, and only requires un-clipping the locking levers in order to remove the cap from the container. Examiner further notes the inner wall (14) comprises the locking lever abutment surface.

Dressel '409 does not teach the ridge comprising an inclined retention surface.

Brandlein '257 teaches a closure for beverage cans, with clamping flanges (6) and (6') which have inclined retention surfaces.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the retention latches of Dressel '409, providing the inclined clamping flanges taught by Brandlein '257, because the clips are a mechanical expedient of those taught by Dressel '409, equally capable of securing the cap onto a container flange.

Regarding claims 4-5 and 30-31, it would have been obvious provide three, or more, locking tabs, because it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Furthermore, it would have been obvious to locate four locking tabs as two pairs of adjacent tabs, or any other configuration, because it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Regarding claim 7, Examiner asserts it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the clips of Brandlein '257, forming the lead angle to between 8 and 30 degrees, or any other desirable angle. Furthermore, regarding claim 8, Examiner asserts it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the clips of Brandlein '257, forming the locking angle to between 5 to 10 degrees, or any other desirable angle. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. To the best degree the Examiner understands the claimed invention, varying the lead angle and locking angles of the locking wedges does not appear to comprise an unexpected result beyond routine experimentation of a known structure by one having ordinary skill in the art, motivated to find the optimum retention force.

Regarding claim 9, Examiner notes Dressel '409, fig. 3, whereby it can be seen the locking tabs have an arcuate shape in the horizontal plane, and this angle spans less than 45 degrees in a circumferential direction.

Regarding claims 18 and 43, it would have been an obvious variant to one having ordinary skill in the art to form the hinge of two or more segments, because it has been held that constructing a formerly

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integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

7. Claims 1, 13, 25, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner US 4,949,865 in view of Dressel et al. US 6,439,409 and in view of Brandlein US 4,579,257.

Turner '865 teaches a container lid comprising a cap removably securable to a container rim by a locking bead (56), having an integral sealing flange (54), and an opening (22) covered by a hinged lid (28). The opening can be considered a vent.

Turner '865 does not teach releasable locking levers secured to the closure cap.

Dressel '409 teaches the equivalence of container locking levers in the embodiment of figs. 9-11, with closure locking levers in figs. 1-8.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Turner '865, replacing the annular flange (56) with the locking levers taught by Dressel '409, because such is an equivalent means for securing a cap to a container flange.

Turner '865, as modified above, does not teach a locking wedge.

Brandlein '257 teaches a closure for beverage cans, with clamping flanges/wedges (6) and (6') which have inclined retention surfaces.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the retention latches of Turner '865, as modified, providing the inclined clamping flanges taught by Brandlein '257, because the clips are a mechanical expedient of those taught by Dressel '409, equally capable of securing the cap onto a container flange.

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Opresco US 5,908,125 as applied above to claim 14 under 35 U.S.C. 102(b), in view of Schiemann US 4,526,289.

Opresco '125 does not teach a seal.

Schiemann '289 teaches a threaded cap having a gasket disposed in a groove, for sealing the associated container.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Opresco '125, providing a gasket in a groove, as taught by Schiemann '289, motivated by the benefit of sealing the container.

9. Claims 20-24, 27 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarnoff et al. US 5,310,981 in view of Dressel et al. US 6,439,409 and in view of Brandlein US 4,579,257.

Sarnoff '981 teaches a vented microwave cooker, comprising cover (14) with vent openings (62), secured by latches (92) and (94) affixed to the container.

Sarnoff '981 does not teach releasable locking levers secured to the closure cap.

Dressel '409 teaches the equivalence of container locking levers in the embodiment of figs. 9-11, with closure locking levers in figs. 1-8.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Sarnoff '981, replacing the locking latches with the locking levers taught by Dressel '409, because the two means of securing a container closure to the container are mechanical equivalents, equally capable of providing a sufficient securing force.

Sarnoff '981, as modified above, does not teach a locking wedge.

Brandlein '257 teaches a closure for beverage cans, with clamping flanges/wedges (6) and (6') which have inclined retention surfaces.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the retention latches of Sarnoff '981, as modified, providing the inclined clamping flanges taught by Brandlein '257, because the clips are a mechanical expedient of those taught by Dressel '409, equally capable of securing the cap onto a container flange.

Regarding claims 20-21, it would have been obvious provide three, or more, locking tabs, because it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Furthermore, it would have been obvious to locate four locking tabs as two pairs of adjacent tabs, or any other configuration, because it

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has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Regarding claim 23, Examiner asserts it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the clips of Brandlein '257, forming the lead angle to between 8 and 30 degrees, or any other desirable angle. Furthermore, regarding claim 24, Examiner asserts it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the clips of Brandlein '257, forming the locking angle to between 5 to 10 degrees, or any other desirable angle. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. To the best degree the Examiner understands the claimed invention, varying the lead angle and locking angles of the locking wedges does not appear to comprise an unexpected result beyond routine experimentation of a known structure by one having ordinary skill in the art, motivated to find the optimum retention force.

Regarding claim 27, it would have been an obvious variant to one having ordinary skill in the art to form the hinge of two or more segments, because it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

10. Claims 38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dressel et al. US 6,439,409 in view of Brandlein US 4,579,257, as applied above to claims 1 and 28, in further view of Buono US 6,612,450.

Dressel '409 does not teach a textured surface on a portion of the actuation arm to reduce slippage of a user's finger.

Buono '450, in col. 4, lines 44-46, teaches texturing of the actuation arm to "provide a grip for further manipulation of the tab for disengaging the cap 10 from container 40."

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the actuation arm of Dressel '409, providing textured gripping ridges, such as those



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taught by Buono '450, motivated by the benefit of providing a means to better allow a user to manipulate the actuator.

11. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sarnoff et al. US 5,310,981 in view of Dressel et al. US 6,439,409 and in view of Brandlein US 4,579,257 as applied to claim 41, above, and further in view of Buono US 6,612,450.

Sarnoff '981, as modified, does not teach a textured surface.

Buono '450, in col. 4, lines 44-46, teaches texturing of the actuation arm to "provide a grip for further manipulation of the tab for disengaging the cap 10 from container 40."

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the actuation arm of Dressel '409, providing textured gripping ridges, such as those taught by Buono '450, motivated by the benefit of providing a means to better allow a user to manipulate the actuator.

### ***Response to Arguments***

12. Applicant's arguments with respect to claims 1-40 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 6,431,385	US 4,676,388
US 5,769,258	US 4,119,239
US 5,375,730	US 3,885,712
US 4,752,014	

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns



**NATHAN J. NEWHOUSE**  
**PRIMARY EXAMINER**